

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 633 (Limón)
Version: April 5, 2021
Hearing Date: April 13, 2021
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Contracts: translations

DIGEST

This bill provides that, for certain types of consumer contracts, where the tradesperson or business knows or has reason to know that a co-signer or guarantor is not proficient in English, the tradesperson or business must provide a translated notice in Spanish, Chinese, Tagalog, Vietnamese, and Korean, as translated and made available by the Business, Consumer Services, and Housing Agency.

EXECUTIVE SUMMARY

Under existing law, when certain consumer contracts are negotiated in Spanish, Chinese, Tagalog, Vietnamese, or Korean, the business or tradesperson conducting the negotiation must provide a version of the contract, translated into the language in which negotiations were conducted, to the consumer prior to signing. If there is a nonparty signatory to the contract, the party conducting the negotiation must also provide a translated copy of the contract to that signatory.

This bill requires that, in transactions where a nonparty signatory will not receive the benefits of the contract (e.g., a guarantor or co-signer), and a business or tradesperson knows or has reason to know that the nonparty signatory is not proficient in English, the business or tradesperson must provide a notice in the five most commonly spoken non-English languages in the state explaining the nature of the nonparty signatory's obligations under the contract and the risks associated with it. The bill provides that the Business, Consumer Services, and Housing Agency (BCSHA) will provide translated versions of the notice that will be publicly available on the BCSHA's website.

This bill is sponsored by the California Low-Income Consumer Coalition and is supported by the California Immigrant Policy Center. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires that any person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, in the course of entering into specified contracts, deliver to the other party to the contract and any other person signing the contract, prior to the execution thereof, a translation of the contract or agreement in the language in which the contract or agreement was negotiated that includes a translation of every term and condition in that contract or agreement.¹ The specified contracts are:
 - a) A contract or agreement for a credit sale subject to the Unruh Act (Title 2 of the Civil Code);
 - b) A vehicle sale subject to the Automobile Sales Act (Chapter 2b of Title 14 of the Civil Code);
 - c) A vehicle lease subject to the Vehicle Leasing Act (Chapter 2d of Title 14 of the Civil Code);
 - d) A loan or extension of credit secured other than by real property, or unsecured, for use primarily for personal, family, or household purposes, including a loan or extension of credit subject to Article 7 of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, the Industrial Loan Law (Division 7 of the Financial Code), or the California Financing Law (Division 9 of the Financial Code);²
 - e) A lease, sublease, rental contract or agreement, or other term of tenancy contract or agreement, for a period of longer than one month, covering a dwelling, apartment, mobile home, or other dwelling unit normally occupied as a residence;
 - f) A reverse mortgage as described in Chapter 8 of Title 4 of Division 3 of the Civil Code;
 - g) A contract or agreement, containing a statement of fees or charges, entered into for the purpose of obtaining legal services, when the person who is engaged in business is currently licensed to practice law under the State Bar Act (Chapter 4 of Division 3 of the Business and Professions Code);
 - h) A foreclosure consulting contract subject to Article 1.5 of Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code. (Civ. Code, § 1632(b)(1)-(7).)

¹ Certain elements of the contract need not be translated, such as proper names, brand names, trademarks, and alphanumeric codes. (Civ. Code, § 1632(i).)

² For loans subject to Article 7 of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, the delivery of a translation of the statement to the borrower required by Business & Professions Code section 10240 satisfies the translation requirement. (Civ. Code, § 1632(c).) Provision of a translated version of the disclosures required by Regulation M or Regulation Z under the Truth in Lending Act (16 U.S.C. § 1601 et seq.) or, where applicable, the Industrial Loan Law satisfies the translation requirement. (Civ. Code, § 1632(e).)

- 2) Requires that, at the time and place where a lease, sublease, or rental contract agreement is executed, notice in any of the specified languages be provided to the lessee or tenant. (Civ. Code, § 1632(d).)
- 3) Requires that a notice in the language that the contract or agreement was negotiated, stating that the person engaged in the trade or business is required to provide a contract or agreement in which the contract or agreement was negotiated, be conspicuously displayed at the time and place where the contract or agreement is executed. (Civ. Code, § 1632(f).)
- 4) Exempts from the translation requirements contracts where the party being negotiated with is a buyer of goods or services, or receives a loan or extension of credit, or enters an agreement obligating himself or herself as tenant, lessee, or sublessee, or similarly obligates themselves by contract or lease, and that party negotiates the terms of the contract, lease, or other obligation through their own interpreter (the “interpreter exemption”). For purposes of the interpreter exemption, the interpreter must be a person who is not a minor, is able to speak fluently and read with a full understanding of both the English language and the languages in which the contract or agreement was negotiated, and is not employed by, or whose services are not made available through, the person engaged in the trade or business. (Civ. Code, § 1632.)
- 5) Provides that the English-language executed contract shall determine the rights and obligations of the parties, but that the translation of the contract or disclosures shall be admissible in evidence to show that no contract was entered into because of a substantial difference in the material terms and conditions between the English-language contract and the translation. (Civ. Code, § 1632(j).)
- 6) Permits, where the person engaged in the trade or business failed to comply with the translation requirements, the aggrieved person to rescind the contract. If a contract for a consumer credit sale or consumer lease has been sold and assigned to a financial institution and is rescinded for failure to comply with the translation requirements, the person engaged in the trade or business must make restitution, rescind the contract, and notify the financial institution of the rescission, and the assignment shall be deemed rescinded. (Civ. Code, § 1632(k).)

This bill:

- 1) Provides that, where a businessperson or tradesperson knows or has reason to know that a person who will sign one of the above-enumerated contracts but not receive the benefits of the contract (e.g., a co-signer or guarantor) is not proficient in English, the businessperson or tradesperson must deliver to the nonparty signatory, before execution of the contract and on a separate page immediately preceding the contract or agreement, a document containing the following notice in Spanish, Chinese, Tagalog, Vietnamese, and Korean:

You are being asked to guarantee this debt. Think carefully before you do. If the borrower does not pay the debt, you will have to pay the debt. Be sure that you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become part of your credit record.

This notice is not the contract that makes you liable for the debt.

- 2) Requires the Business, Consumer Services, and Housing Agency to prepare translations of the notice specified above and make the translations available to the public on its website, for use by persons engaged in a trade or business.

COMMENTS

1. Author's comment

According to the author:

Currently, there are few protections for non-English-speaking co-signers. Co-signing is often very beneficial to the primary signer. It is important co-signers are aware of the terms of the contract they are signing. They are taking on all of the liability of the contract, often without any of the benefit. They can lose money, have their wages garnished, and have their credit damaged.

This bill will require a notice to be given to co-signers explaining they are co-signing a contract and should be aware of their liability, obligations, and to seek a translator for the contract if needed. This notice will be provided in the five most commonly spoken languages in California. The Business, Consumer Services, and Housing Agency will provide the translated notice on their website to be freely and easily accessed by businesses. This notice better enables consumers to make an informed decision, ensures that everyone who signs is aware of their obligations, consents to the contract, and provides the businesses with protection and safe harbor from litigation.

2. This bill adds a layer of protection for co-signers and businesses entering into specified consumer contracts

Under California law, if certain consumer contracts are negotiated in Spanish, Chinese, Tagalog, Vietnamese, or Korean – the five most common non-English languages spoken in California – the business or tradesperson negotiating the contract must give the other party and any non-party signatories a copy of the contract translated into that language for the consumer to review before signing.³ This obligation is relieved if the consumer provides their own interpreter.⁴ A consumer who does not receive the mandated translation has a right to rescind the contract.⁵

Current law, however, does not guard against an English-speaking party taking advantage of an unknowing nonparty signatory, such as a co-signer or guarantor, who is not proficient in English. For contracts negotiated in English, there is no current requirement that such a nonparty signatory be provided with any information regarding what they are signing.⁶ According to the author, this leads to circumstances where an English-speaking party to a contract fraudulently induces a nonparty signatory to guarantee the contract. When this happens, the nonparty signatory ends up liable for an obligation they did not understand they were agreeing to, and the business might end up with a guarantor who is not in a position to make good on their (unknowingly given) guarantee.

This bill would provide a measure of protection against the kind of fraud described above, by requiring businesses or tradespeople who know or have reason to know that a nonparty signatory is not proficient in English with a notice regarding their obligations under the contract in the five most common non-English languages spoken in California. The text of the notice is adopted from a notice that must be provided in English and Spanish to co-signers of certain consumer credit transactions.⁷ While the bill would not capture all Californians not proficient in English – a daunting task, given that over 200 languages are spoken in California⁸ – the notice translated into Spanish, Chinese, Tagalog, Vietnamese, and Korean would be understandable to the vast majority of California’s non-English speakers.⁹ By providing nonparty signatories who are not proficient in English with information about the obligation they are agreeing to

³ Civ. Code, § 1632(b).

⁴ *Id.*, § 1632(h).

⁵ *Id.*, § 1632(k).

⁶ See generally Civ. Code, § 1632.

⁷ See Civ. Code, § 1799.1.

⁸ E.g., Dolan, *With 220 languages spoken in California, courts face an interpreter shortage*, Los Angeles Times (Sept. 5, 2017), <https://www.latimes.com/local/lanow/la-me-ln-court-interpreter-20170905-story.html> [last visited Mar. 31, 2021].

⁹ E.g., United States Department of Health and Human Services, *Estimates of at Least the Top 15 Languages Spoken by Individuals with Limited English Proficiency for the 50 States, the District of Columbia, and the U.S. Territories* (Aug. 2016), <https://www.hhs.gov/sites/default/files/resources-for-covered-entities-top-15-languages-list.pdf> [last visited Mar. 31, 2021], at p. 2.

make, this bill would help avoid circumstances where an unscrupulous party misleads a non-English speaker into guaranteeing a contract.

For businesses, this bill should add only a de minimis burden to the existing contracting process. The bill provides that the BCSHA will be responsible for providing translated versions of the notice online as of January 1, 2021, so a business need not pay for a translator; at most, the business will need to print out a couple of extra sheets of paper. The obligation to provide the notice applies only when the business knows or has reason to know that the nonparty signatory is not proficient in English, so the business need not engage in additional diligence with respect to transactions conducted entirely online. And while the translated notice might dissuade some nonparty signatories from guaranteeing a contract, this is a feature of the bill, not a bug: avoiding a contract with an unwilling or judgment-proof signatory in the first instance is much more cost-effective than entering into the contract and finding out, only after litigation, that the nonparty signatory was tricked into signing.

SUPPORT

California Low-Income Consumer Coalition (sponsor)
California Immigrant Policy Center

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 960 (Hertzberg, 2020) would have clarified that contracts or agreements to secure or finance a bail bond or immigration bond for the release of a detained individual are contracts covered by various statutes governing contract requirements, including the statutes that require translations of contracts or agreements. SB 960 was held in the Senate Judiciary Committee.

AB 3254 (Limón, Ch. 161, Stats. 2020) expanded the requirement that, for certain businesses already required to provide translated versions of a contract in Spanish, Chinese, Tagalog, Vietnamese, or Korean because the party speaks primarily one of those languages, to require those businesses also to provide translated versions to any nonparty signatories of the bill.

SB 318 (Hertzberg, 2019) would have added several provisions relating to the for-profit bail system, including clarifying that loans or extension of credit subject to the

translation requirement include contracts or agreements to secure or finance a bail bond or immigration bond for the release of a detained individual. SB 318 died in the Assembly Insurance Committee.

AB 2708 (Reyes, 2018) would have specified that, if a minor negotiates an applicable transaction for a consumer who speaks one of the specified languages, the seller is required to provide a translation to the consumer in the consumer's spoken language before the transaction is executed. AB 2708 died in the Assembly Appropriations Committee.

SB 245 (Correa, Ch. 117, Stats. 2014) updated the demographic data underlying the findings relating to the number of Californians who speak a language other than English in the home and the number of those Californians who have little or no English proficiency.
